

As noted by the Office action, Collins does not teach limitation where at least an “alternate capacity program performs substantially the same function as the given program but having a different power source capacity associated therewith” and replacing the alternative capacity program based on the power indicator. The Examiner also cites Gschwind *et al.* for “replacing an algorithm with one that dissipates less power.”

The Office action is equating “power source capacity” with “power dissipation.” Gschwind *et al.* is directed specifically to a “method and apparatus for software-assisted thermal management for electronic systems.” As described in the Field of the Invention “the present invention relates generally to power and power-density management in microprocessors, and more particularly to a method and apparatus for a power and thermal management employing software and hardware components.” Col. 1, lines 11-14.

With respect to the Summary of the Invention at the bottom of Col. 2 and continuing over the Col. 3 includes “the invention relates to integration of software and hardware components in the response to thermal management events. A feature of the invention is the provision of a sensor for measuring power dissipation linked with both a hardware-based thermal management solution and with a means for causing a notification event to software.” As indicated in Col. 4, lines 25-35, “According to the present invention, thermal control is performed with software assistance. In particular, hardware is adapted to generate notification events for software to request a reduction in power-intensity by software, or to notify software when less power-efficient algorithms can be employed again. Preferably, the invention is practiced in conjunction with a hardware-based thermal control circuit that will activate when software-based approaches are insufficient to reduce power dissipation to acceptable levels, or, in the case of software malfunction, to prevent catastrophic system failure.”

The problem being addressed in the present claimed invention, as well as in Collins, is performing operations based on the capacity of the battery not the power consumed and the thermal effect of the operating elements within the phone. Thus, it would not be obvious to use the thermal control of Gschwind *et al.* in the battery level control device of Collins. To make such a combination would be searching for bits and pieces in the prior art to reconstruct the claimed invention. Thus, the combination of Collins and Gschwind *et al.* is not obvious to one of ordinary skill in the art. Thus Claims 1, 19 and 20 and their dependent claims are

considered allowable over the art of record and thus the passage of this case to issue is respectfully solicited.

Respectfully submitted,

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